THE HON'BLE SRI JUSTICE BILAL NAZKI

and

THE HON'BLE SRI JUSTICE NOOTY RAMA MOHANA RAO

WRIT PETITION Nos.26882 and 26913 of 2006

Date: 15.06.2007

Between:

M/s.M.G.Metalic Springs Private Limited

....Petitioner

and

The Asst. Commissioner of Commercial Taxes-II, Ananthapur.

....Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

and

THE HON'BLE SRI JUSTICE NOOTY RAMA MOHANA RAO

WRIT PETITION Nos.26882 and 26913 of 2006

COMMON ORDER: (per BN, J)

The parties in both the writ petitions are one and the same and both the petitions arise out of same questions of fact, therefore, they are being disposed of by a common order.

The petitioner has filed the above two writ petitions challenging the assessment orders, dated 27.10.2006, as illegal, arbitrary and without authority of law. The petitioner submitted that he was a dealer engaged in manufacture and sale of springs and other products. It has also undertaken lease of some equipment to the needy dealers in other States on monthly rents. On 28.08.2006, the respondent department gave show cause notices to the petitioner, whose reply was considered and the impugned orders of assessment were passed.

The main contention of the petitioner is that the transactions in question have taken place outside the State of Andhra Pradesh, and the goods had been imported from Thaiwan and delivered at Bangalore for the purpose of lease in favour of M/s.Stumpp Schuele & Somappa Private Limited, Bangalore, as such the goods in question were not assessable to A.P. Value Added Tax (VAT).

The case of the respondent was that their department was within its rights to levy tax on the rentals received by the petitioner for transferring of the right to use the goods, under Section 4(8) of the Andhra Pradesh VAT Act.

In the show cause notices, dated 28.08.2006, the department informed the petitioner that the business premises of the petitioner company at Anantapur was audited on 14.07.2006 and on verification of the records relating to 2005-06 and 2006-07, it was noticed that the assessee had leased out their machinery to M/s.Stumpp Schuele and Somappa Private Limited, Bangalore by entering into an agreement on 11.01.2005. The lease amounts were received by the petitioner company at Anantapur. The lease amounts or the rental amounts were liable to tax, therefore, they were asked to file their objections. They have filed objections and the authority considered their objections and passed the impugned orders.

Admittedly, the amounts have been received by the petitioner company but it wants to lay stress on the lease between it and M/s.Stumpp Schuele and Somappa Private Limited to contend that the whole transaction took place outside the State of Andhra Pradesh and machinery was imported from a foreign country and was directly delivered in Karnataka. These are the matters, which can be gone into in an appeal. We do not specifically go into this question because it would cause prejudice to the parties, if an appeal is filed. Since an efficacious alternative remedy is available to the petitioner and the questions raised in the writ petitions are factual, which can be gone into by the appellate authority, we do not think that the impugned order can be termed as an order without jurisdiction. Therefore, we dismiss both the writ petitions.

The interim stay granted by this Court on 27.12.2006 is hereby vacated. However, we grant fifteen days time to the petitioner to file an appeal. No costs.

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BILAL NAZKI, J

15th JUNE, 2007.

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NOOTY RAMA MOHANA RAO, J

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